

## **RESPONSE**

### **In the Drawings and Specification**

Applicant expresses his appreciation to the Examiner for pointing out the inadvertent omission of the cited drawing reference numerals from the Specification. The indicated amendments to the appropriate paragraphs include such references. Support for these amendments is found in the Specification at ¶ [0045] (p. 13, ¶ 3) (hand 8) and ¶ [0040] (p. 11, ¶ 1) and ¶ [0050] (p. 15, ¶ 3) (cone C and jet J). Applicants believe no new matter has been added by these amendments and entry by the Examiner is respectfully requested.

### **In the Claims**

1. Claims 47-49, 59, 61, and 65-67, 69-75, 77-80 are pending in the Application.
2. Please cancel claims 68 and 76 without prejudice.
3. Applicant expresses his appreciation for the allowance of claims 47-49, 59, 65, and 66.
4. Claims 47, 48, and 75 stand objected to because of several informalities. The indicated amendments to the enumerated claims are intended to overcome the Examiner's objections. At the suggestion of the Examiner, claim 47 has been amended to substitute "deposited" for "deposit" and an antecedent basis for "the deposited web or mat" has been included. Support is found in the Specification at ¶¶ [0006], [0007], and [0019]. Also, claim 48 has been amended to substitute "least" for "last". Applicant would like to note, however, that the file copy shows "least". It is anticipated, however, that the indicated amendment is made correctly. Support is found in the Specification in original claims 1-3. In addition, claim 48 has also been amended to substitute "deposited" for "deposit". Finally, claim 75 has been amended to correct for lack of antecedent basis for "bandage" by substituting the term "wound dressing". Support is found throughout the Specification, particularly at ¶ [0084] and the original claims.

Applicant believes no new matter has been added by these amendment and entry by the Examiner and withdrawal of the objections is respectfully requested.

5. Claim 61 has been amended as shown to correct a typographical error. The word “electric” has been replaced by “electret” to describe the type of polymer intended. Support is found in the Specification at ¶ [0017]. Applicant believes no new matter has been added by this amendment and entry by the Examiner is respectfully requested.

6. Claims 65 and 67 have been amended to correct a typographical error. The first steps state “supplying a polymer containing liquid”. Note that these claims do not say, “a polymer(hyphen)containing liquid”. More properly, the first steps should read “a liquid containing a polymer”. Support for these amendments are found throughout the Specification and specifically at ¶ [0011] (“liquid comprising polylactic acid”) and ¶ [0012] (“liquid comprising a biocompatible polymer”).

7. Claims 69-75 and 77 stand objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 69, 74, and 77 have been so amended and entry by the Examiner is respectfully requested. Accordingly, claims 70-73, 75, 78, and 80 now depend from arguably allowable claims.

8. Claim 61 stands rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 4,043,331 to Martin *et al.* (“Martin”). As directed by the Examiner, Martin teaches fibers of “very small diameter” to effect a “high surface area” and “[w]here the dressing is formed from a wettable polymer, blood or serum escaping from the wound tends to penetrate the dressing and the high surface area encourages clotting.” (Martin at 2:12-16.) Martin also teaches that “[w]here the dressing is formed from a non-wetting polymer . . . if the interstices between the fibres are sufficiently small . . . tissue fluids, including blood, tend not to permeate the dressing, so that the fluids are retained adjacent to the wound, where clotting will occur.” (Martin at 2:18-24.) Also, as indicated by the Examiner, Coffee claims “to provide nuclei or otherwise initiate interactive cellular and/or molecular events in tissue repair.” Coffee is

different and distinguishable. In addition to the important feature of *not* teaching *electret* polymers, Martin may first use any suitable polymer that will enable mechanical wetting alone. Or, in the case of a non-wetting polymer, provide small interstices. Thus, Martin is concerned with wettable polymers or small interstices. The quoted recitation of claim 61, in contrast, provides fibres, fibre fragments, or particles which “initiate interactive cellular and/or molecular events”. See, ¶ [0016] (“to promote essential cell activities, for example, to stimulate dendritic growth, growth factors such as fibroblast growth factor (FGF), epithelial growth factor (EGF), transforming growth factor (TGF) and others that may be used to promote or otherwise control the sequence of events essential to natural tissue repair”) and ¶ [0071] (same quote). In addition, Martin teaches only *encouraging* clotting which, in turn, *promotes* tissue repair. The effect of the mat in Martin is, thus, as an indirect promoter of tissue repair. The effect of the mat in Martin is to encourage clotting, to stop bleeding, and perhaps, create and *environment* which *may* be favorable to tissue repair. As cited in claim 61, molecular events in tissue repair are initiated. Thus, new tissue is generated, at the molecular level, due to the presence of the formed fiber, fibrils, or particles of the electret polymer. Nothing in Martin teaches such effects from an electret polymer. In further support of these contentions, Applicant submits the enclosed Rule 132 Affidavit of Dr. Herbert S. Bresler. Accordingly, Applicant submits that claim 61 distinguishes patentably over Martin.

9. Claims 68 and 76 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Martin. Claims 68 and 76 have been cancelled.

10. Claim 67 stands rejected under 35 U.S.C. § 103 as being unpatentable over Martin. The Examiner argues that Martin teaches “gel-like matter” and cites two sections. Applicant contends the cited passages not only do not teach such, but teach away from “gel-like matter”. Martin at 1:13-21 discusses “the liquid is caused to produce fibers” and “the fibers usually *harden* . . . where the liquid is normally *solid* at room temperature . . . chemical *hardening* . . . [or] dehydration.” (Emphasis added.) At 4:64-5:9, Martin discusses “friable” and “sintered” mats. In the first instance, there is simply no suggestion of “gel-like material”. “Gel” is defined in Webster’s II, New College Dictionary as “a semisolid material, as a jelly”. In the second instance, the cited terms teach away from “gel-like material”. “Friable” is defined in

Webster's as "readily crumbled : brittle" and "sintered" as "weld together . . . without melting". And, as used in Martin, "sintered" is carried out with heat. These terms run counter to "gel-like matter".

11. As further pertains to claim 67, the Examiner asserts that it would have been obvious in view of Martin "to regulate the flow of liquid to the liquid outlet in order to determine the particle size (thinness)." Applicant first contends that the Examiner has not made out a prima facie case of obviousness. While the Examiner may rely on facts within his personal knowledge, there must be specific facts to support such a contention. *See*, 37 C.F.R. § 1.104(d)(2). In addition, "A statement that modifications of the prior art to meet the claimed invention would have been 'well within the ordinary skill of the art at the time the claimed invention was made' . . . is not sufficient to establish a prima facie case of obviousness without some objective reason . . . ." MPEP 2143.01. Citing *Ex parte Levengood*, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). (Emphasis in original.) Finally, "Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. MPEP 2144.03 A. Citing *In re Ahlert*, 424 F.2d 1088, 165 U.S.P.Q. 418 (CCPA 1970). Accordingly, Applicant hereby requests an affidavit from the Examiner. Second, with all due respect, Applicant believes the Examiner has misstated the claim limitation. Claim 67 states that the liquid is "regulat[ed] . . . to form electrically charged gel-like matter". The Examiner states that the object is to "determine the particle size (thinness)". The formation of "gel-like matter" is not particularly related to "thinness" (which is nowhere in claim 67) but is related to, for example, liquid selection (*e.g.*, volatility and viscosity) (Specification at ¶ [0041].) as well as flowrate. Accordingly, Applicant submits that claim 67 is not obvious in view of Martin and withdrawal of this rejection by the Examiner is respectfully requested.

12. Claim 79 stands rejected under 35 U.S.C. § 103 as being unpatentable over Martin. Claim 79 has been amended to include the limitations of claim 68. The Examiner states that it would have been obvious to "modify the mat with . . . a surfactant in order to increase strength or water resistance". Citing Martin at 1:34-37. Martin makes no mention for using a surfactant to increase strength or water resistance. Likewise, there is no mention of increasing

strength or water resistance in claim 79. In fact, disclosed is incorporating surfactants "in the outer surface of fibers". Specification at ¶ [0088]. In addition, Coffee discloses "coating with . . . surfactants". There is also no mention in claim 79 of a post-treatment element. Accordingly, Applicant submits that claim 79 is not obvious in view of Martin and withdrawal of this rejection by the Examiner is respectfully requested.

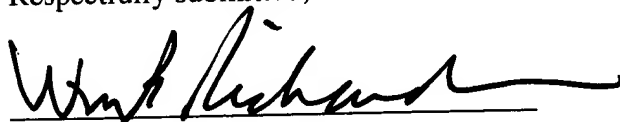
### Closure

1. Previously, fees were paid for a total of 41 claims, 19 independent claims, and one multiple dependent claim. As submitted herewith, a total of 15 claims, 7 independent claims, and one multiple dependent claim are remaining with the Application. Thus, Applicant believes that no additional claim-related fees are due.

2. Assignee of all right, title, and interest in the instant Application hereby asserts, pursuant to 37 C.F.R. § 1.27(a), that it is entitled to small entity status and hereby asserts such small entity status.

3. This is a request for a one-month extension of time to respond to the Office Action. A period for response was set to expire January 7, 2005. Applicant encloses herewith a credit card authorization form PTO-2038 for \$55.00 for the abovementioned fee. Please charge any additional fees, or credit any overpayments in connection with this Response to Applicant's undersigned counsel's Deposit Account 021266. A duplicate copy of this authorization is also enclosed.

Respectfully submitted,



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